

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 7381, 7384, 7385
7386 and 8437 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HARIYANA SHIP DEMOLITION PVT. LTD.

Versus

GUJ MARITIME BOARD

Appearance:

1. Special Civil Application No. 7381 of 2005
MR YN RAVANI for Petitioner No. 1
MR PR NANAVATI for Respondent No. 1
DS AFF.NOT FILED (N) for Respondent No. 2
MR HD DAVE & MR DIPEN DESAI, AGPs for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/05/2005

COMMON ORAL JUDGEMENT

#. In this group of petitions, notice for final disposal was issued by this Court and in response to that Mr.P.R.Nanavaty, learned advocate appears for the Gujarat Maritime Board and Mr.H.D.Dave, learned A.G.P. appears for the respondent no. 3 so far as Special Civil Application Nos. 7381, 7384 and 8437 of 2005 are concerned and Mr.Dipen Desai, learned A.G.P. appears for respondent no. 3 so far as Special Civil Application Nos. 7385 and 7386 of 2005 are concerned.

#. With the consent of the parties, all these petitions are taken up for final hearing today and as the common question of law and facts arise in this group of petitions, these petitions are being disposed of by this common order.

#. In this group of petitions, respective petitioners have challenged the legality and validity of the order passed by the Gujarat Maritime Board under Clause 25 (b) of Chapter VIII of Gujarat Maritime Board Ship Recycling Regulations, 2003 ("Regulations" for short).

#. It appears from the record that due to death of some labourers working with the respective petitioners, individual show cause notice came to be issued upon the petitioners by which respective petitioners were directed to show cause as to why permission in their favour to use respective plots should not be cancelled as it was prima facie found that labourers have died due to negligence on their part. The said show cause notice came to be replied by the respective petitioners and thereafter the impugned order came to be passed by which in exercise of the powers under Clause 25 (b) of the Regulations, the petitioners are directed to deposit Rs.5,00,000/- by way of penalty. It appears from the record that against the said order, some of the petitioners preferred appeal before the State Government and the State Government has quashed and set aside the impugned order passed by the Gujarat Maritime Board and remanded the matter to the GMB for passing the order afresh after giving opportunity to the concerned petitioners. It appears that the said appeal came to be filed under clause 28 of the Regulations. However, on going through the provisions of the Regulations, more particularly, clause 28 only against the order made under Clause 26, the appeal is provided to the State Government and no appeal is provided to the State Government against the order passed under clause 25(b) of the Regulations. Therefore, any order passed by the State Government against the order passed under clause 25(b) is nullity, as, the same is

without jurisdiction and that is how this Court has decided the present petition on merits. Mr.Y.N.Ravani, learned advocate appearing for the respective petitioners has submitted that entire proceedings of inquiry are in violation of the principles of natural justice. It is further submitted that the procedure which is required to be followed under Regulations is not followed and without holding any inquiry as contemplated under clause 25(b), the impugned order has been passed. Therefore, it is requested to allow the present petition accordingly.

#. Mr.P.R.Nanavaty, learned advocate for the respondent GMB has tried to support the order passed by the GMB imposing penalty upon the petitioners. However, he is not in a position to satisfy this court with regard to the procedure which is required to be followed by the GMB as contemplated under Clause 25 of the Regulations. He is also not in a position to satisfy this Court with regard to the supply of inquiry report held before imposing the penalty.

#. Heard the learned advocates for the parties.

#. Clause 25 of the Regulations reads as under :

"In the event of any accident/fire/explosion on any plot and/or any ship leading to a death or serious bodily injury to any person or for the non-compliance of any of these Regulations, resulting in any accident on any plot and / or the ship, the following actions shall be taken :

(a) In the event of major fire / explosion / accident causing damages with or without death or serious bodily injury to any person all activities related to ship recycling on the plot be suspended forthwith by the port authority with immediate effect for a period not exceeding 5 (Five) days. During such period the safety officers appointed by the Board / Owner shall thoroughly inspect the plot / yard and get into the causes of incident and direct respective plot holder to rectify the same and restore safe working environment prior to resumption of operation.

(b) For all the cases of fire / accident / explosion leading to a death or serious bodily injury to any person, an inquiry shall be commissioned by an authorized person(s) and shall file the inquest report on which the port

authority shall initiate penal action, if any.

Provided further that in such eventuality, the ship-recycler shall immediately pay ex-gratia compensation of Rs.25,000/- (Rupees twenty five thousand only) per person or an amount as may be decided by the Board from time to time to the next kin of the deceased and Rs.5,000/- (Rupees five thousand only) per case or more as may be decided by the Board from time to time to the injured victim, over and above the compensation that may be received by the next kin of the deceased or the injured victim from insurance claim or under any other enactment including Workmen Compensation Act.

In case the negligence on the basis of the inquiry report submitted by the authorized person(s) as per clause 25(b) above is proved on the part of the plot holder / ship breaker, following penalty shall be imposed.

- (i) In case of first incident of fire / explosion / accident leading to a death or serious bodily injury as defined u/s 92 of the Factories Act, 1948, to any person shall attract penalty of Rs.5,00,000/- (Rupees five lacs).
- (ii) For every subsequent incidents of fire / explosion / accident within one year leading to a death or serious bodily injury as defined u/s 92 of the Factories Act 1948 to any person in the same plot shall attract penalty at double the rate as recovered for the previous incident.

The amount so collected shall be credited in a separate welfare account maintained by the Port authority, and shall be utilized for welfare and awareness programmes for the benefit of workers.

Provided that in case of more than two incidents of fire / explosion / accident leading to death or serious bodily injury to any person in the same plot, the permission for ship recycling activities on the said plot shall be cancelled by VC & CEO, GMB for a period of six months and would be granted thereafter only on being satisfied that the plot owner has enhanced safety arrangements by training, installation of additional equipments and agreed to abide by directives issued by GMB after investigation into

such accidents.

- (c) The aforesaid penal action shall be taken concurrently with other appropriate penal action that may be taken under other relevant Statutes, Acts and Regulations etc."

#. Before imposing the penalty as required under clause 25(b), certain procedure is required to be followed. The inquiry is to be commissioned by the authorised person and is required to file inquest report on which the port authority is required to initiate the penal action, if any. In such eventuality, the ship-recycler is required to immediately pay ex-gratia compensation of Rs.25,000/per person or an amount as may be decided by the board from time to time to the next kin of the deceased and Rs.5,000/- per case or more as may be decided by the Board from time to time to the injured victim, over and above the compensation that may be received by the next kin of the deceased or the injured victim from insurance claim or under any other enactment including Workmen Compensation Act. In case, the negligence on the basis of the inquiry report submitted by the authorised person as per clause 25(b) is proved on the part of the plot holder / ship breaker, in that case, in case of first incident of fire / explosion / accident leading to a death or serious bodily injuries as defined under Section 92 of the Factories Act, 1948 to any person shall attract penalty of Rs.5,00,000/-. The amount so calculated is required to be credited in a separate welfare account maintained by the port authority and is required to be utilized for welfare and awareness programmes for the benefit of workers. On considering the aforesaid provisions, more particularly, clause 25(b) and considering the facts of the present case, it appears that there is no inquiry report submitted by the authorised person and if it is submitted copy of which is not given to the concerned petitioners to meet with the same. It is the case of the respondent GMB that in fact there was inquiry and inquiry report submitted by the authorised person and on the basis of that action has been taken. It is the case of the petitioners that though demanded, the inquiry report submitted by the authorised person has not been given to the concerned petitioners and the said factum has not been disputed by the learned advocate appearing for the respondent Board. Under the circumstances, it is established that proper procedure as required to be followed under clause 25(b) of the Regulations has not been followed and the inquiry report submitted by the authorised officer is not given

to the concerned petitioners. Under the circumstances, the impugned orders are in breach of principles of natural justice as the respondent GMB has relied upon the report submitted by the authorised person for the purpose of holding the petitioners negligent and while imposing the penalty. Under the circumstances, on that ground alone the impugned orders are required to be quashed and set aside and hereby quashed and set aside. The matters are remanded to the respondent Gujarat Maritime Board for passing appropriate orders on its own merits and in accordance with law, after giving opportunity to the concerned petitioners and supplying documents / report relied upon by the GMB. Such exercise is required to be done by the GMB within a period of 3 months from the date of receipt of this order.

#. For the reasons stated above, these petitions are partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)

(pathan)